

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

DONNELL PONTON :
 :
 v. : Case No. PERA-C-08-406-E
 :
 CITY OF PHILADELPHIA :

FINAL ORDER

Donnell Ponton (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on November 6, 2008, as supplemented on November 10 and 12, 2008. The Complainant's exceptions challenge a November 4, 2008 decision of the Board Secretary declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against the City of Philadelphia (City).

In the Charge filed on October 17, 2008, the Complainant alleged that the City, along with the American Federation of State, County and Municipal Employees, District Council 33, Local 427, AFL-CIO (AFSCME),¹ discriminated against him thereby forcing him to resign from his position on April 9, 2008. The Complainant asserted that the City's actions violated Section 1201(a)(1), (2), (3), (4), (5), (7) and (9) of the Public Employee Relations Act (PERA).

In dismissing the Charge, the Board Secretary stated that the Complainant's Charge was untimely under Section 1505 of PERA because the Complainant did not file the Charge within four months of when he alleged that the City's actions forced him to resign from his position, *i.e.*, April 9, 2008. The Board Secretary further indicated that the Complainant lacked standing to allege violations of Section 1201(a)(2), (5) and (9) of PERA, citing Lyman v. Pittsburgh Board of Public Education, 34 PPER 38 (Final Order, 2003)(individual employees lack standing to allege violation of Section 1201(a)(2)); and Case v. Hazleton Area School District, 915 A.2d 1262 (Pa. Cmwlth. 2007)(individual employees lack standing to allege violations of Section 1201(a)(5) and (9)). Finally, the Board Secretary stated that the Complainant had failed to state causes of action under Section 1201(a)(1), (3), (4) and (7) of PERA.²

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair practices is not a matter of right, but is within the sound discretion of the Board. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

The Complainant initially argues in the exceptions that the Charge is timely because the City has continued to violate his rights to the present by challenging the decision of the Unemployment Compensation Board of Review to grant the Complainant unemployment compensation benefits. Section 1505 of PERA provides that no charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the charge. A charge will be considered timely if it is filed within four months of when the charging party knew or should have known that an unfair practice was committed. Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College, 35 PPER 24 (Final Order, 2004).

¹ The Complainant's Charge of Unfair Practices against AFSCME was docketed at Case No. PERA-C-08-407-E. The Board Secretary also declined to issue a complaint on the Complainant's Charge against AFSCME and the Complainant filed exceptions to that decision. In a Final Order issued on this date, the Board dismissed those exceptions and affirmed the Secretary's decision not to issue a complaint.

² The Board Secretary also noted that to the extent that the Complainant was alleging that the City had engaged in racial discrimination, these allegations are appropriately remedied through a filing with the Pennsylvania Human Relations Commission or the Equal Employment Opportunity Commission.

Generally, the mere fact that the employer takes a position adverse to the complainant in litigation in another forum cannot be the basis for a finding of an unfair practice by the Board. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania Department of Corrections, 35 PPER 97 (Final Order, 2004); Central Bucks Education Association v. Central Bucks School District, 24 PPER ¶ 24056 (Proposed Decision and Order, 1993). Thus, the Complainant's allegations regarding the City's appeal from the unemployment compensation determination involving the Complainant do not state a cause of action under Section 1201 of PERA. Therefore, the timeliness of the Complainant's Charge must be measured by the other events referenced in his Charge. However, all of these events, including his resignation on April 9, 2008, occurred more than four months before the filing of the Charge. As such, the Complainant's Charge is untimely because it was filed outside the four-month statute of limitations under Section 1505 of PERA.

Furthermore, even if the Complainant's Charge was timely filed, the Complainant failed to state a cause of action under Section 1201(a) of PERA. The Complainant argues in the exceptions that he has stated causes of action under Section 1201(a)(2), (5) and (9) of PERA. However, an individual employe lacks standing to allege violations of Section 1201(a)(2), (5) and (9). Lyman, supra; Case, supra. Indeed, only the exclusive representative of the employes, *i.e.*, the union, has standing to file a charge of unfair practices against a public employer alleging a violation of these clauses.

Further, in order to sustain a charge of discrimination under Section 1201(a)(3) of PERA, the charging party must prove that the employe engaged in protected activity, that the employer knew of that activity and that the employer took adverse action against the employe in regard to hire or tenure of employment or any term or condition of employment because of a discriminatory motive or anti-union animus. Cameron County Educational Support Personnel Association PSEA/NEA v. Cameron County School District, 37 PPER 45 (Final Order, 2006)(citing St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977)); 43 P.S. § 1101.1201(a)(3). Here, the only action by the City that occurred within the four month limitations period under PERA was the City's act of challenging the Complainant's eligibility for unemployment compensation benefits. That action by the City did not involve the Complainant's hire or tenure of employment or any term or condition of Complainant's employment with the City and, thus, cannot be the basis for a finding of a violation of Section 1201(a)(3). Therefore, the Complainant has failed to state a timely cause of action under Section 1201(a)(3).

Moreover, the Board has held that Section 1201(a)(4) of PERA is limited to situations where an employe is discriminated against by his or her employer for filing affidavits, petitions or complaints with the Board or providing information or testimony in a Board proceeding. Luzerne County Community College Association of Higher Education v. Luzerne County Community College, 37 PPER 123 (Final Order, 2006). The Complainant's Charge and exceptions do not allege that the Complainant filed an affidavit, petition or complaint with the Board or gave information or testimony before the Board, or that the City took adverse action against the Complainant because of such activity. Thus, the Complainant has failed to state a cause of action under Section 1201(a)(4) of PERA.

Additionally, Section 1201(a)(7) prohibits public employers from "[v]iolating any of the rules and regulations established by the [B]oard regulating the conduct of representation elections." The Complainant alleges in the exceptions that the City violated Section 1201(a)(7) with regard to internal union elections of officers that were held in January 2007 and May 2007. However, Section 1201(a)(7) only applies to representation elections conducted by the Board in which public employes are voting on whether or not they wish to be represented by a union for collective bargaining purposes, and does not apply to internal union elections of officers. The Board lacks jurisdiction over the conduct of internal union elections for officers. As such, the Complainant has failed to state a cause of action under Section 1201(a)(7) of PERA.

Finally, the Complainant has not set forth any facts in the Charge or exceptions that would support a determination that the City committed an independent violation of Section 1201(a)(1) of PERA. Therefore, any violation of this section would have to be a derivative violation of Section 1201(a)(2), (3), (4), (5), (7) or (9). Because the Complainant has not alleged facts that would support a finding that the City violated any

of these clauses, no derivative violation of Section 1201(a)(1) could be found. Accordingly, the Board Secretary did not err in dismissing the Complainant's Charge.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Secretary's decision declining to issue a complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Donnell Ponton are dismissed and the Secretary's November 4, 2008 decision not to issue a complaint be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member, this sixteenth day of December, 2008. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.